

The failure to include the assignment held by the Government of the United States was an inadvertent oversight by the Applicant's agent during submission of the Issue Fee Transmittal document, PTOL-85B. The error was recognized immediately by the United States Geological Survey upon receipt of the Letters Patent. The assignees promptly notified Applicant's agent of the omission. This petition and the accompanying petition under §1.182 have been filed immediately to prevent the second assignee from being deprived of its due recognition as co-owner of the invention.

According to 37 CFR §1.183, in an extraordinary situation, when justice requires, any requirement of the regulations which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, or on petition of the interested party, subject to such other requirements as may be imposed. In the present case, justice requires that the correct assignees be named on the face of the patent. We anticipate high public interest in this patent and wish to ensure that the public is immediately cognizant of the co-ownership of the patent. Further, we wish to avoid public reliance on incomplete assignment information. These goals can only be achieved by reprinting the front page of US 7,232,565 and correcting the information in the electronic databases that are available to the public.

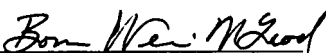
The invention resulted from a collaboration between researchers at Montana State University and the United States Geological Survey. The microorganisms that are the subject of this invention have shown a remarkable ability to confer heat and drought tolerance to plants. Not surprisingly, this invention has significant commercial potential in the agricultural industry. A license has recently been granted to further develop the invention now patented in U.S. 7,232,565. The United States Government justifiably wants its name publicly associated with this important invention, so as to acknowledge its contribution. Further, Montana State

University has provided the Government with their assurances that they would always be properly cited as co-owners of the claimed invention. Failure to correct the face of the patent to reflect the names of both assignees would rob the United States Government of its due recognition as a co-owner of the invention, an injustice that should not prevail solely because the Applicant's agent made an inadvertent error in completing the PTOL-85 form.

The \$400.00 petition fee required by 37 C.F.R. § 1.17(f) is being submitted with this Petition. The Director is hereby authorized to charge any additional fees, or credit any overpayment, to Deposit Account 50-1283.

Respectfully submitted,

COOLEY GODWARD KRONISH LLP


Bonnie Weiss McLeod, Ph.D.
Reg. No. 43,255

August 7, 2007

CUSTOMER NO.: 58249
COOLEY GODWARD KRONISH LLP
1200 19th Street, N.W. 5th Floor
Washington, D.C. 20036
Telephone: (202) 842-7800
Facsimile: (202) 842-7899

Attachments:

- Petition under 37 CFR § 1.182 to Reprint the Front Page of the Letters Patent
- Submission under 37 CFR § 1.28(c) to Correct Error in Small Entity Status
- Notice of Assignment recordation and assignment for Montana State University
- Notice of Assignment recordation and assignment for Government of the United States
- Letters Patent



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:)
Joan M. HENSON *et al.*)
U.S. Patent No.: 7,232,565)
Application No.: 10/602,546)
Filed: June 23, 2003)
Issued: June 19, 2007)
For: THE USE OF ENDOPHYTIC)
FUNGI TO TREAT PLANTS)

**PETITION UNDER 37 C.F.R. § 1.182
TO REPRINT THE FRONT PAGE
OF THE LETTERS PATENT**

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Petition under 37 C.F.R. § 1.182 to request that the front page of the attached original Letters Patent be corrected and reprinted to include the name of an omitted assignee. Accompanying this petition is a second petition requesting that the rules under 37 CFR § 3.81(a) be waived to permit the addition of an omitted assignee to the above-mentioned patent after issuance. A submission under 37 CFR 1.28(c) to correct the error in small entity status and to correct fee deficiencies is also submitted herewith.

On May 11, 2007, Applicant's agent submitted the Issue Fee Transmittal Form PTOL-85 noting the sole assignee as "Montana State University." A second assignment to the "Government of the United States of America, Represented by the Secretary of the Department of the Interior" was recorded on October 26, 2004, at Reel/Frame 015917/0334 (copies of the Notice of Recordation and assignment documents are attached hereto). As explained in the

attached petition under 37 CFR § 1.183, the omission of the second assignee was inadvertent and due to significant public interest, the Office should reprint the first page, particularly in view of patentee's promptness in seeking the requested relief.

According to 37 CFR § 1.182, all situations not specifically provided for in the regulations will be decided in accordance with the merits of each situation by or under the authority of the Director. The Director therefore has the authority to approve reprinting of the first page of the Letters Patent. While Applicant is aware that the original Letters Patent is reprinted only under very rare circumstances, as explained below and in the attached Petition under 37 CFR § 1.183, justice requires that the correct assignees be named on the face of the patent in the present case.

The invention resulted from a collaboration between researchers at Montana State University and the United States Geological Survey. The microorganisms that are the subject of this invention have shown a remarkable ability to confer heat and drought tolerance to plants. Not surprisingly, this invention has significant commercial potential in the agricultural industry. A license has recently been granted to further develop the invention now patented in U.S. 7,232,565. The United States Government justifiably wants its name publicly associated with this important invention, so as to acknowledge its contribution.

Due to importance of the invention, its co-ownership by the United States Government, and the number of readers that will no doubt request a copy of the patent, it is only fair that both owners of this invention be shown on the face of the patent. Failure to correct the face of the patent to reflect the names of both assignees would rob the United States Government of its due recognition as co-owner of the invention, an injustice that should prevail solely because the Applicant's agent made an inadvertent error in completing the PTOL-85 form.

The \$400.00 petition fee required by 37 C.F.R. § 1.17(f) is being submitted with this Petition. The Director is hereby authorized to charge any additional fees, or credit any overpayment, to Deposit Account 50-1283.

Respectfully submitted,

COOLEY GODWARD KRONISH LLP



Bonnie Weiss McLeod, Ph.D.
Reg. No. 43,255

August 7, 2007

CUSTOMER NO.: 58249
COOLEY GODWARD KRONISH LLP
1200 19th Street, N.W. 5th Floor
Washington, D.C. 20036
Telephone: (202) 842-7800
Facsimile: (202) 842-7899

Attachments:

- Petition under 37 CFR § 1.183 to Waive the Rules under 37 CFR § 3.81(a)
- Submission under 37 CFR § 1.28(c) to Correct Error in Small Entity Status
- Notice of Assignment recordation and assignment for Montana State University
- Notice of Assignment recordation and assignment for Government of the United States
- Letters Patents



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

APRIL 26, 2005

PTAS



102869596A

DORSEY & WHITNEY LLP
TRACI H. ROPP
FOUR EMBARCADERO CENTER
SUITE 3400
SAN FRANCISCO, CA 94111-4187

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RECORDATION DATE: 10/26/2004

REEL/FRAME: 015949/0905

NUMBER OF PAGES: 4

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

HENSON, JOAN M.

DOC DATE: 08/24/2004

ASSIGNOR:

SHEEHAN, KATHY B.

DOC DATE: 08/30/2004

ASSIGNEE:

MONTANA STATE UNIVERSITY
304 MONTANA HALL
P.O. BOX 172460
BOZEMAN, MONTANA 59717-2460

SERIAL NUMBER: 10602546

FILING DATE: 06/23/2003

PATENT NUMBER:

ISSUE DATE:

TITLE: USE OF ENDOPHYTIC FUNGI TO TREAT PLANTS

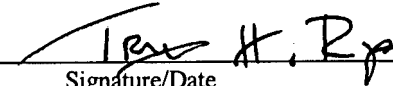
015949/0905 PAGE 2

PAULA MCCRAY, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

10-28-2004

10/26/04



To the Honorable Commissioner of Patents and Trademark		102869596	/ thereof.
1. Name of conveying party(ies): Joan M. Henson and Kathy B. Sheehan Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		2. Name and address of receiving party(ies): Name: <u>Montana State University</u> Internal Address: _____	
3. Nature of Conveyance: <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____ Execution Dates: <u>August 24, 2004, August 30, 2004</u>		Street Address: <u>304 Montana Hall</u> <u>P.O. Box 172460</u> City: <u>Bozeman</u> State: <u>Montana</u> Zip: <u>59717-2460</u> Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is: _____			
A. Patent Application No.(s) 10/602,546		B. Patent No.(s) _____	
Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>TRACI H. ROPP</u> Internal Address: <u>DORSEY & WHITNEY LLP</u> _____ _____ _____ Street Address: <u>FOUR EMBARCADERO CENTER</u> <u>SUITE 3400</u> City: <u>SAN FRANCISCO</u> State: <u>CA</u> Zip: <u>94111-4187</u>		6. Total number of applications and patents involved: <u>One</u> 7. Total fee (37 CFR 3.41):.....\$ <u>40.00</u> <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account	
8. Deposit account number: <u>50-2319</u> Please debit any underpayment or credit any overpayment to the above deposit account. Our Docket No. <u>470425-00018 (A-72343)</u>			
DO NOT USE THIS SPACE			
9. Statement and signature. <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i> TRACI H. ROPP Reg. No. 44,307 Name of Person Signing  Signature/Date Oct. 20, 2004 Total number of pages including cover sheet, attachments and document: [4]			
OMB No. 0651-0011 (exp. 4/94)			

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Mail documents to be recorded with required cover sheet information to:

10/27/2004 ECDOPER 00000074 10602546

01 FC:8021

40.00 DP

Our File No. 470425-00018 (A-72343)

Mail Stop Assignment Recordation Services
Director of the US Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

ASSIGNMENT

WHEREAS, the undersigned

Joan M. Henson, resident of Bozeman, state of Montana; and
Kathy B. Sheehan, resident of Bozeman, state of Montana,

(hereinafter termed "Inventor(s)"), has invented certain new and useful improvements in

USE OF ENDOPHYTIC FUNGI TO TREAT PLANTS

for which an application for a United States Patent was filed on **June 23, 2003** having Application Number **10/602,546** and

WHEREAS,

Montana State University, an educational institution of the State of Montana, having a place of business at P.O. Box 172460, 304 Montana Hall, Bozeman, Montana 59717-2460 (hereinafter termed "Assignee"), is desirous of acquiring the entire right, title and interest in and to said application and the invention disclosed therein, and in and to all embodiments of the invention, heretofore conceived, made or discovered jointly or severally by said Inventors (all collectively hereinafter termed "said invention"), and in and to any and all patents, inventor's certificates and other forms of protection (hereinafter termed "patents") thereon granted in the United States and foreign countries.

NOW, THEREFORE, in consideration of good and valuable consideration acknowledged by said Inventors to have been received in full from said Assignee:

1. Said Inventors do hereby sell, assign, transfer and convey unto said Assignee, the entire right, title and interest (a) in and to said application and said invention; (b) in and to all rights to apply for foreign patents on said invention pursuant to the International Convention for the Protection of Industrial Property or otherwise; (c) in and to any and all applications filed and any and all patents granted on said invention in the United States or any foreign country, including each and every application filed and each and every patent granted on any application which is a division, substitution, or continuation of any of said applications; and (d) in and to each and every reissue or extensions of any of said patents.

2. Said Inventors hereby jointly and severally covenant and agree to cooperate with said Assignee to enable said Assignee to enjoy to the fullest extent the right title and interest herein conveyed in the United States and foreign countries. Such cooperation by said Inventors shall include prompt production of pertinent facts and documents, giving of testimony, execution of petitions, oaths, specifications, declarations or other papers, and other assistance all to the extent deemed necessary or desirable by said Assignee (a) for perfecting in said Assignee the right, title and interest herein conveyed; (b) for prosecuting any of said applications; (c) for filing and prosecuting substitute, divisional, continuing or additional applications covering said invention; (d) for filing and prosecuting applications for reissuance of any said patents; (e) for interference or other priority proceedings involving said invention; and (f) for legal proceedings involving said invention and any applications therefor and any patents granted thereon, including without limitation opposition proceedings, cancellation proceedings, priority contests, public use proceedings, infringement actions and court actions; provided, however, that the expense incurred by said Inventors in providing such cooperation shall be paid for by said Assignee.

3. The terms and covenants of this assignment shall inure to the benefit of said Assignee, its successors, assigns and other legal representatives, and shall be binding upon said Inventors, their respective heirs, legal representatives and assigns.

4. Said Inventors hereby jointly and severally warrant and represent that they have not entered and will not enter into any assignment, contract, or understanding in conflict herewith.

IN WITNESS WHEREOF, the said Inventors have executed and delivered this instrument to said Assignee as of the dates below written adjacent to each of their respective signatures.

Signature of Inventor : Joan M. Henson
Joan M. Henson

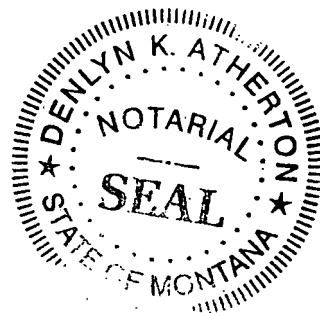
Date : 8-24-04

County of Gallatin)
) ss.
State of Montana)

On this 24th day of August in the year 2004, before me Denlyn K. Atherton Notary Public of the State of Montana personally appeared Joan Henson personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature Denlyn K. Atherton



(Seal)

Denlyn K. Atherton
Notary Public for the State of Montana
Residing at 315 Coulee Dr., Bozeman, MT 59718
My Commission Expires 07/02/2007

Signature of Inventor : Kathy B Sheehan

Kathy B. Sheehan

Date : 8-30-04

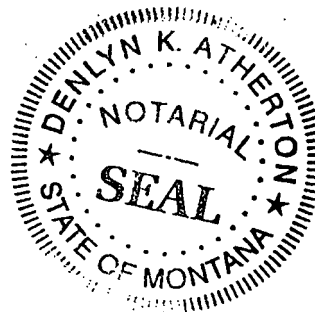
County of Gallatin)
) ss.
State of Montana)

On this 30th day of August in the year 2004, before me
Denlyn K. Atherton Notary Public of the State of Montana personally
appeared Kathy B. Sheehan personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person whose name is subscribed to the within
instrument, and acknowledged that he/she executed the same in his/her authorized
capacity(ies), and that by his/her signature on the instrument the person, or the entity
upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Denlyn K. Atherton

Denlyn K. Atherton
Notary Public for the State of Montana
Residing at 315 Coulee Dr., Bozeman, MT 59718
My Commission Expires 07/02/2007



(Seal)



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

APRIL 19, 2005

PTAS



102869597A

DORSEY & WHITNEY LLP
TRACI H. ROPP
FOUR EMBARCADERO CENTER
SUITE 3400
SAN FRANCISCO, CA 94111-4187

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RECORDATION DATE: 10/26/2004

REEL/FRAME: 015917/0334
NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).
DOCKET NUMBER: 470425-00018(A-72343)

ASSIGNOR:

RODRIGUEZ, RUSSELL J.

DOC DATE: 08/30/2004

ASSIGNOR:

REDMAN, REGINA S.

DOC DATE: 08/30/2004

ASSIGNEE:

GOVERNMENT OF THE UNITED STATES OF
AMERICA, REPRESENTED BY THE
SECRETARY OF THE DEPARTMENT OF
THE INTERIOR
1849 C STREET, N.W.
WASHINGTON, D.C. 20240

015917/0334 PAGE 2

SERIAL NUMBER: 10602546

FILING DATE: 06/23/2003

PATENT NUMBER:

ISSUE DATE:

TITLE: USE OF ENDOPHYTIC FUNGI TO TREAT PLANTS

DOROTHY RILEY, PARALEGAL
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

10-28-2004

10/26/04



To the Honorable Commissioner of Patents and Trademark		102869597	by thereof.
1. Name of conveying party(ies): Russell J. Rodriguez and Regina S. Redman Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		2. Name and address of receiving party(ies): Name: <u>Government of the United States of America</u> <u>Represented by the Secretary of the Department of the Interior</u> Internal Address: _____	
3. Nature of Conveyance: <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____ Execution Dates: <u>August 30, 2004, August 30, 2004</u>		Address: <u>1849 C Street, N.W.</u> <u>Washington DC 20240</u> Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is: _____			
A. Patent Application No.(s) 10/602,546		B. Patent No.(s)	
Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>TRACI H. ROPP</u> Internal Address: <u>DORSEY & WHITNEY LLP</u> _____		6. Total number of applications and patents involved: <u>One</u> <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account	
Street Address: <u>FOUR EMBARCADERO CENTER</u> <u>SUITE 3400</u> City: <u>SAN FRANCISCO</u> State: <u>CA</u> Zip: <u>94111-4187</u>		8. Deposit account number: <u>50-2319</u> Please debit any underpayment or credit any overpayment to the above deposit account. Our Docket No. <u>470425-00018 (A-72343)</u>	
DO NOT USE THIS SPACE			
9. Statement and signature. <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i> <div style="display: flex; justify-content: space-between;"> <div style="width: 40%;"> TRACI H. ROPP Reg. No. 44,307 Name of Person Signing </div> <div style="width: 40%; text-align: center;"> Signature/Date </div> <div style="width: 15%; text-align: center;"> <u>Oct 20, 2004</u> </div> </div> <div style="text-align: right; margin-top: 10px;"> Total number of pages including cover sheet, attachments and document: [2] </div>			
OMB No. 0651-0011 (exp. 4/94)			

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10/27/2004 EDCOPER 00000073 10602546

01 FC:8021

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Our File No. 470425-00018 (A-72343)

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 Director of the US Patent and Trademark Office
 PO Box 1450
 Alexandria, VA 22313-1450

 OCT 26 AM 8:15
 CPR/FINANCE

ASSIGNMENT OF INVENTION

WHEREAS we, Russell J. Rodriguez of Seattle, WA and Regina S. Redman of Seattle, WA, while employed by the Government of the United States of America, hereinafter referred to as the Government, have made an invention entitled USE OF ENDOPHYTIC FUNGI TO TREAT PLANTS, described in U.S. provisional patent application 60/390,515, filed June 21, 2002, Patent application 10/602,546, filed on June 23, 2003 and Patent Cooperation Treaty application PCT/US03/19983, filed June 23, 2003; and

WHEREAS, the conditions under which the invention was made are such as to entitle the Government under Paragraph 1(a) of Executive Order 10096, to the entire right, title, and interest therein, including foreign rights; and

WHEREAS, the Government desires to obtain the entire right, title and interest in and to the invention disclosed in said application within the United States of America, its territories and possessions and other rights and benefits herein granted; and

WHEREAS, the Government desires an option to obtain the foreign rights in and to the invention;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration the receipt of which is hereby acknowledged, we hereby assign and transfer to the United States of America, as represented by the Secretary of the Department of the Interior the entire right, title, and interest in and to said invention within the United States of America, its territories and possessions, and the entire right, title, and interest in and to said application and any continuation, division or substitution thereof, and such Letters Patent as may issue therefrom and any reissue or extensions thereof, said invention, application and Letters Patent to be held by the United States of America to the end of the term for which said Letters Patent may be granted, as fully and entirely as the same would have been held by us had this assignment not been made.

We do hereby also grant to the Government, the option to take the entire right, title, and interest in and to the invention and all patent applications, patents and other forms of protection thereon in countries foreign to the United States of America within eight months of the filing date of any application for United States Letters Patent covering the invention; such option to be exercised by a written notification to us within such eight months identifying the specific foreign countries in which the Government will file or cause to be filed an application for patent or other form of protection on the invention; and that the rights in the foreign countries not exercised under the option are left to us subject to a nonexclusive, irrevocable, royalty-free license to the Government in any patent or other form of protection which may issue on the invention in any foreign country, including the power to issue sub-licenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government.

WE hereby further agree to make, execute, and deliver to the Government, any and all papers, documents, affidavits, statements or other instruments that may be necessary in the prosecution of the application and any continuation, division or substitution of the application, or any application for reissue or extension of said Letters Patent, and to assist the Government in every way in protecting the invention as may be requested, provided that any expense arising through such efforts will be paid by the Government.

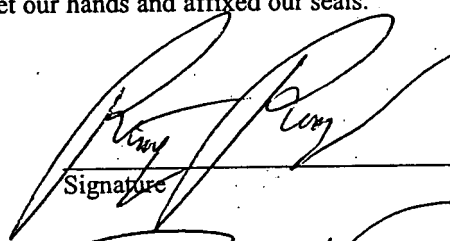
IN TESTIMONY WHEREOF, we have set our hands and affixed our seals.

8/30/04

Date

8/30/04

Date


Signature


Signature